

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

HENRY JOSEPH JAQUEZ,)	
)	
Plaintiff,)	
)	
-vs-)	Case No. CIV-11-1066-F
)	
LAWTON CORRECTIONAL)	
FACILITY, et al.,)	
)	
Defendants.)	

ORDER

United States Magistrate Judge Suzanne Mitchell issued two report and recommendations on April 23, 2013. In the first report and recommendation (doc. no. 77), Magistrate Judge Mitchell recommended that the motion to dismiss and/or motion for summary judgment (doc. no. 61) filed by defendants, C. Chester, Rick Whitten, Sgt. Brashears, Sgt. Bjork, Sgt. Hill, Mrs. Stouffer and Sabier Hildner be granted in part and denied in part. In the second report and recommendation (doc. no. 78), Magistrate Judge Mitchell recommended that the motion to dismiss (doc. no. 39) filed by defendants, Justin Jones and Mike Carpenter, be granted and that certain claims against these defendants be dismissed on screening.

Magistrate Judge Mitchell advised the parties of their right to object to the report and recommendations by May 13, 2013 and that failure to make timely objection to the report and recommendations waives the right to appellate review of both factual and legal issues therein contained. To date, only defendant, Rick Whitten, has filed an objection. Defendant Whitten objects to the first report and

recommendation to the extent Magistrate Judge Mitchell's recommends denial of summary judgment or dismissal of plaintiff's Eighth Amendment claims against defendant Whitten involving a lack of sheets or blankets (claim 2(b)), hygiene items (claim 3(b)), clean clothes (claim 4), and writing supplies etc. (claim 6), from July 18, 2011 to August 2, 2011.

In accordance with 28 U.S.C. § 636(b)(1), the court has conducted a *de novo* review of that portion of the first report and recommendation to which defendant Whitten has specifically objected. Having done so, the court concurs in the analysis and recommendation of Magistrate Judge Mitchell regarding plaintiff's claims 2(b), 3(b), 4 and 6 against defendant Whitten. The court finds defendant Whitten's objections to be without merit. The court therefore accepts, affirms and adopts that portion of the first report and recommendation to which defendant Whitten has specifically objected.

As to the other portions of the first report and recommendation to which no objection has been filed and to which no request for an extension of time to file an objection has been sought, the court accepts, adopts and affirms those portions in their entirety.

No objection has been filed to the second report and recommendation within the time prescribed by Magistrate Judge Mitchell and no request for an extension of time to file an objection has been submitted. Consequently, the court accepts, adopts and affirms the second report and recommendation in its entirety.

IT IS THEREFORE ORDERED that the Report and Recommendation on the Motion to Dismiss/Motion for Summary Judgment by the Private Prison Defendants (doc. no. 77) and the Report and Recommendation on the Motion to Dismiss by Defendants Jones and Carpenter (doc. no. 78), both issued by United States Magistrate

Judge Suzanne Mitchell on April 23, 2013, are **ACCEPTED, ADOPTED** and **AFFIRMED**.

IT IS ALSO ORDERED that Defendants Justin Jones and Mike Carpenter's Motion to Dismiss (doc. no. 39) is **GRANTED**. Plaintiff's claims against defendants, Justin Jones and Mike Carpenter, are dismissed pursuant to Rule 12(b)(6), Fed. R. Civ. P., and 28 U.S.C. § 1915(e)(2)(B)(ii).

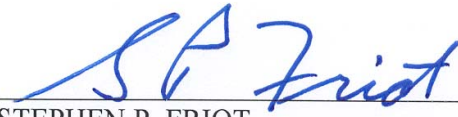
IT IS ADDITIONALLY ORDERED that the Motion to Dismiss/Motion for Summary Judgment filed by defendants, C. Chester, Rick Whitten, Sgt. Brashears, Sgt. Bjork, Sgt. Hill, Mrs. Stouffer and Sabier Hildner is **GRANTED IN PART** and **DENIED IN PART**. Summary judgment is entered in favor of defendants on claims 1, 2(a), 5, 7(a), 9(c), 11, 12, 13, 14, 15 and 16 based on nonexhaustion of administrative remedies. Claims 3(a), 8, 9(a), (b) and 10 against defendants are dismissed with prejudice pursuant to Rule 12(b)(6), Fed. R. Civ. P. Claim 7(b) against defendants is dismissed without prejudice pursuant to Rule 12(b)(6), Fed. R. Civ. P., for failure to state a claim. Claims 2(b), 3(b), 4 and 6 against defendants, C. Chester and Mrs. Stouffer, are dismissed without prejudice pursuant to Rule 12(b)(6), Fed. R. Civ. P., for lack of personal participation.

IT IS ADDITIONALLY ORDERED that claims 2(b), 3(b), 4 and 6 against defendant, Rick Whitten, remain pending.

IT IS FURTHER ORDERED that this action is referred to United States Magistrate Judge Suzanne Mitchell in accordance with 28 U.S.C. § 636 to conduct any necessary hearings, including evidentiary hearings, for the entry of appropriate orders as to non-dispositive matters, and for the preparation and submission to the

undersigned judge of proposed findings and recommendations as to dispositive matters referenced in 28 U.S.C. § 636(b)(1)(B) and (C).¹

DATED June 12, 2013.


STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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¹ The court notes that there are two motions, not addressed in the report and recommendations, which remain pending. They are plaintiff's Motion for Appointment of Counsel Made Under the Penalty of Perjury (doc. no. 68) and the LCF Defendants' Motion for Protective Order (doc. no. 70). The court leaves those non-dispositive motions to be addressed by Magistrate Judge Mitchell.